**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION (L) NO.65 OF 2007**

**IN**

**NOTICE OF MOTION NO.2476 OF 2007**

**IN**

**SUIT (L) NO.1052 OF 2007**

Nitin Boja Shetty .. Petitioner.

Versus

Abdul Latif Kasmani & Ors. .. Respondents.

Mr.R.V.Govilkar i/b. R.A.Baig for petitioner.

Mr.V.J.Hegde for respondent.

**CORAM : S.C.DHARMADHIKARI, J.**

**DATE : 2nd AUGUST, 2007.**

**P.C.:**

1. Mr.Govilkar, learned Advocate, appearing for petitioner states that the contempt petition would be duly numbered during the course of the day.

2. The contempt petition is by the petitioner original plaintiff alleging that the respondents are

violating the order passed by this Court deliberately inasmuch as construction on the suit property is still going on.

3. Mr.Govilkar has invited my attention to the orders passed by this Court on 20th April, 2007 and 4th June, 2007. He submits that ad-interim order of injunction is with regard to several prayers in the Notice of Motion, one of which is restraining the respondents, who are defendants to the suit from carrying out further construction on the suit property.

4. He submits that despite this order, the status-quo at site has not been maintained and further construction is going on. He states that considering the strained relations between parties, it is difficult for the petitioner to ascertain the existence of the construction at site and this Court should, therefore, direct a status report to be filed with regard to the said construction and thereafter, proceed to take necessary action under Contempt of Courts Act, 1971.

5. On the other hand, Mr.Hegde, appearing for the respondents invites my attention to the affidavit in reply and submits that the position has been clarified therein

clearly. He states that the construction which was being carried on as on the date of the order passed by this Court has not progressed further. He submits that the document, which has been annexed to the petition itself (Notice from the B.M.C. under Section 52 read with Section 43 of the Maharashtra Regional And Planning Act, 1966) would indicate that the construction has not progressed beyond ground plus three floors. In such circumstances, it is false to allege that the order has been violated, much less deliberately. He submits that the petition is filed to harass and pressurize the respondents and somehow to get further reliefs in the suit.

6. The affidavit-in-reply, which has been filed on behalf of one Iqbal Abdul Latif (respondent No.2), in paragraph 18 states thus : -

> "18. With reference to paragraph 16, I deny that any construction of any nature whatsoever was carried out after 4/6/2007 as is falsely and baselessly alleged. I say that on the day of the passing of the said order, the construction of the building upto the third floor level had come up and further construction was immediately stopped

after the passing of the order on 4/6/2007. Although the work of carrying out plastering, colouring, fitting electrical wires, window sliding etc., do not constitute the work of construction, even the said work was stopped from the date of the order and the same is not being carried out at high speed as is alleged. I further deny that the petitioner saw that on 2/7/2007 that construction material was unloaded at site, inasmuch as I have learnt that the petitioner is absconding that presently is in hiding outside Mumbai as there are several cases under the Maharashtra Prevention of Dangerous Activities Act pending against the petitioner and he is facing arrest. The present case is conducted through proxy as can be seen from the verification clause of the petition. I further say that the labourers and workers are kept on site as the respondents are confident of the outcome of the appeal preferred by the respondents 1 to 4 and in any event this Hon’ble Court has not directed that the respondents should remove the workers from the site. I vehemently deny that any construction work was carried out after the passing of the order and as such the question of

> the respondents having deliberately wilfully, intentionally and/or knowingly flouting the said order does not arise and the entire spiel of allegations of the petitioner in that regard is false and denied by me."

7. From a reading of the same, it is clear that the construction work has not progressed beyond what was existing as on 4th June, 2007. In the light of this statement, which is in consonance with the contents of No Objection certificate issued by the B.M.C., copy of which is annexed at Exh.I, Pg.203 of the petition paperbook, would demonstrate that the petitioners have not been able to show that the order passed by this Court has been violated in any manner.

8. If the construction work is unauthorized, according to the petitioners, then, their remedies lie elsewhere, if they have no access to the site and do not know the existence of the construction carried on till the date of the order passed by this Court, then, also their remedies are always open by making appropriate applications in the suit. Contempt Petition is not the remedy for seeking any other and further reliefs.

9. The Contempt Petition is, therefore, misconceived and is dismissed.

**(S.C.Dharmadhikari, J.)**